

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

JOHN SCOTT SMITH, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

FLAGSTAR BANCORP, INC. and
FLAGSTAR BANK, FSB,

Defendants.

Case No. 2:22-cv-11465-GAD-DRG

Hon. Gershwin A. Drain
Magistrate Judge David R. Grand

PLAINTIFF’S RESPONSE TO SHOW CAUSE ORDER

Plaintiff John Scott Smith respectfully submits the following response to the Court’s show-cause order entered on October 14, 2022 (ECF No. 10).

1. On June 29, 2022, Plaintiff Smith filed a class action lawsuit against Defendants Flagstar Bancorp, Inc. and Flagstar Bank, FSB (collectively, “Flagstar”) arising from a data breach that occurred in December 2021 and impacted more than 1.5 million individuals. Plaintiff Smith suffered extensive identity theft and fraud as a result of the breach. *See* ECF No. 1.

2. The *Smith* action was ultimately one of 16 similar class action cases filed in this District against Flagstar relating to the data breach, where Flagstar is headquartered. The earliest-filed case, *Angus v. Flagstar*, Case No. 4:22-cv-11385-SDK-KGA, was assigned to the Hon. Shalina D. Kumar.

3. On July 6, 2022, the plaintiff in the *Angus* action filed a motion to consolidate the *Smith* action (and other related actions) before Judge Kumar pursuant Fed R. Civ. P. 42(a) and LR 42.1. *See Angus*, Case No. 4:22-cv-11385, ECF No. 7. A notice of the motion to consolidate was filed before this Court. *See* ECF No. 4. Plaintiff Angus filed similar motions with respect to additional related actions. *See Angus*, ECF Nos. 5, 6, 7, 9, and 14.

4. Anticipating that the related cases would be consolidated before a single judge, on July 28, 2022, the parties to this action filed a stipulated order seeking to toll Defendants' deadline to respond to Plaintiff's complaint pending consolidation of the related cases. *See* ECF No. 9. The parties stipulated that "Flagstar's deadline to answer, move, or otherwise respond to the Complaint shall be tolled pending resolution of the Consolidation Motions." *See id.*, ¶ 5(a). The Court signed the stipulated order. *See generally* ECF No. 9.

5. Accordingly, by this Court's order, Plaintiffs cannot take any affirmative action in this case until after Defendants file a responsive pleading, which is triggered on resolution of the consolidated motions. *See id.*, ¶ 5(b) ("The parties will meet and confer and, within ten (10) days of the resolution of the Consolidation Motions, submit a proposed schedule for the filing of any further complaint, Flagstar's response to the Complaint, and any other applicable procedural deadlines based on the Court's resolution of the Consolidation Motions.").

6. To date, 14 of the 16 related *Flagstar* cases have been reassigned to Judge Kumar:

Case Name	Case No.	Date Filed	Date Reassigned
<i>Temple</i>	22-cv-11395	June 22, 2022	July 11, 2022
<i>Robbins</i>	22-cv-11423	June 24, 2022	June 30, 2022
<i>Wiedder</i>	22-cv-11446	June 28, 2022	June 29, 2022
<i>Smith</i>	22-cv-11465	June 29, 2022	Not yet reassigned
<i>McLaughlin</i>	22-cv-11470	June 29, 2022	July 6, 2022
<i>Roll</i>	22-cv-11502	July 1, 2022	July 11, 2022
<i>McCarthy</i>	22-cv-11536	July 7, 2022	August 5, 2022
<i>Turner</i>	22-cv-11539	July 7, 2022	July 22, 2022
<i>McKenney</i>	22-cv-11541	July 8, 2022	July 11, 2022
<i>Perkaj</i>	22-cv-11569	July 11, 2022	August 4, 2022
<i>Kincaide</i>	22-cv-11583	July 13, 2022	July 26, 2022
<i>Cousino</i>	22-cv-11619	July 15, 2022	July 22, 2022
<i>Pike</i>	22-cv-11642	July 18, 2022	July 27, 2022
<i>Silva</i>	22-cv-11729	July 26, 2022	July 27, 2022
<i>Hernandez</i>	22-cv-11887	Aug. 12, 2022	Aug. 17, 2022
<i>Myers</i>	22-cv-12180	Sept. 14, 2022	Not yet reassigned

7. Plaintiff Smith is prepared to prosecute this action upon further order from the Court. If this Court is inclined to reassign this action to Judge Kumar, then Plaintiff Smith will prosecute his case in accordance with any future schedule entered by Judge Kumar. If this Court is not inclined to reassign this action, Plaintiff Smith respectfully requests that the Court enter an order vacating the parties' prior

stipulated order and setting a date by which Defendants must file a responsive pleading.

Dated: October 19, 2022

/s/ Michael N. Hanna

Michael N. Hanna (P81462)

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** Application for admission forthcoming*

Counsel for Plaintiff Smith and the Class

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on October 19, 2022, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

/s/ Michael N. Hanna

Michael N. Hanna